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Before the
FEDERAL COMMUNICATIONS COMMISSION
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Redevelopment of Spectrum to
Encourage Innovation in the
Use of New Telecommunications
Technologies

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ET Docket No. 92-9
RM-7981
RM-8004

To: The Commission

REPLY COMMENTS OF THE
ASSOCIATION OF AMERICAN RAILROADS
ON PETITIONS FOR RECONSIDERATION AND CLARIFICATION

The ASSOCIATION OF AMERICAN RAILROADS ("AAR"), by its attorneys and pursuant to Section 1.429 of the Commission's Rules, hereby submits these reply comments on the petitions for reconsideration and clarification of the Commission's Third Report and Order and Memorandum Opinion and Order ("Third R&O") in ET Docket No. 92-9, released August 13, 1993.¹

As AAR stated in its Petition for Reconsideration and Partial Clarification, the railroad industry seeks to ensure that the implementation of the 2 GHz relocation transition framework will not endanger the safety and reliability of the nation's railroads. To this end, the railroad industry recommended that the Commission reconsider or clarify three issues.

^{1/} These Reply Comments are considered timely pursuant to the Public Notice released October 22, 1993 (58 Fed. Reg. 54591).

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Adjacent Government Frequencies as Relocation Spectrum. AAR

urged the Commission to recommend to the National Telecommunications and Information Administration ("NTIA") to include the federal spectrum adjacent to the 2 GHz band in its Spectrum Reallocation Report as required by the Omnibus Budget Reconciliation Act of 1993. Utilizing adjacent federal spectrum as a relocation site is in the public interest as well as in the interest of fixed microwave incumbents and the new entrants such as personal communications services ("PCS") providers. AAR notes that both fixed microwave incumbents and potential PCS providers such as the American Petroleum Institute, Apple Computer, Inc., MCI Telecommunications Corporation and Western Tele-Communications, Inc., support the use of government spectrum as the relocation site for displaced 2 GHz fixed microwave incumbents.²

Awarding of Licenses As the Trigger for the Voluntary Negotiation Period. AAR suggested that the Commission use the awarding of licenses as the trigger for the two-year negotiation period rather than the "acceptance of applications." The Utilities Telecommunications Council ("UTC"), API and MCI also

^{2/} American Petroleum Institute Statement of Partial Support and Partial Opposition, filed November 8, 1993, at 6-7; Comments of Apple Computer, Inc., filed November 8, 1993, at 3-4; Comments of MCI Telecommunications, Inc., filed November 8, 1993, at 2-3; and Western Tele-communications, Inc. Petition for Partial Reconsideration, filed October 21, 1993 at 3-5.

supported reconsideration of the "acceptance of applications" as the trigger for the commencement of the two-year, voluntary negotiation period.³ The rationale for using the issuance of a license as the trigger for commencing the two-year negotiation period is simple and straightforward: absent the issuance of a license, there is no entity with whom the fixed microwave incumbent can negotiate.

American Personal Communications ("APC") opposed such action because it believed emerging technology applicants need the additional time afforded by such an early commencement of the voluntary negotiation period to acquire information necessary to formulate a competitive bidding posture.⁴ AAR notes that general information (such as location and frequency) concerning fixed microwave incumbents' 2 GHz facilities is publicly available; furthermore, as APC itself noted, because the two-year period is voluntary, PCS applicants may not be able to acquire non-public information regarding 2 GHz facilities from fixed microwave incumbents during the two-year voluntary period. Notwithstanding APC's objection, AAR believes that, with such widespread support from other quarters, reconsideration of the

^{3/} Comments of the Utilities Telecommunications Council on Petitions for Reconsideration, filed November 8, 1993, at 3-4; API at 3-5; and MCI at 5.

^{4/} Comments of American Personal Communications on Petitions for Reconsideration, filed November 8, 1993, at 15-16.

starting point of the voluntary negotiation period is warranted to ensure the opportunity for meaningful negotiations during the entire two-year period.

Availability of Tax Certificates Should be Expanded. AAR recommended that all relocating fixed microwave licensees should be eligible for tax certificates to ease the burden of relocation. AAR's position is supported by fixed microwave incumbents and PCS providers alike, including API, UTC, Apple, MCI, UTAM and APC.⁵

Conclusion. It is in the public interest for federal spectrum adjacent to the 2 GHz band to be made available on a permanent basis for relocating fixed microwave licensees. The issuance of a license, not the acceptance of applications, should trigger the voluntary negotiation period. Finally, all fixed microwave licensees required to relocate should be eligible for tax certificates to minimize any adverse financial impact that might accompany relocation.

^{5/} API at 5-6; UTC at 8-10; Apple at 4; MCI at 5-6; UTAM Comments on Emergency Petition and Petitions for Reconsideration and/or Clarification, filed November 8, 1993, at 9-10; and APC at 17, n. 15.

For these reasons, AAR respectfully requests that the Commission reconsider and clarify the Third R&O as recommended herein.

Respectfully submitted,

THE ASSOCIATION OF AMERICAN RAILROADS

By Michael S. Wroblewski
Thomas J. Keller
Michael S. Wroblewski

VERNER, LIIPFERT, BERNHARD,
McPHERSON AND HAND, CHARTERED
901 15th Street, N.W., Suite 700
Washington, D.C. 20005
(202) 371-6000
Its Attorneys

November 18, 1993

CERTIFICATE OF SERVICE

I, Bridget Y. Monroe, a secretary for the law firm Verner, Liipfert, Bernhard, McPherson and Hand, Chartered, do hereby certify that a true and correct copy of the foregoing "Reply Comments of the Association of American Railroads on Petitions for Reconsideration and Clarification" was mailed first-class, postage prepaid, this 18th day of November, 1993, to the following:

Chairman James H. Quello
Federal Communications Comm.
1919 M Street, NW -- Room 802
Washington, D.C. 20554

Commissioner Andrew D. Barrett
Federal Communications Comm.
1919 M Street, NW -- Room 844
Washington, D.C. 20554

Commissioner Ervin S. Duggan
Federal Communications Comm.
1919 M Street, NW -- Room 832
Washington, D.C. 20554

Robert M. Pepper
Office of Plans & Policy
Federal Communications Comm.
1919 M Street, NW
Room 822, Mail Stop 1000
Washington, D.C. 20554

Thomas P. Stanley
Office of Engin. & Tech.
Federal Communications Comm.
2025 M Street, NW
Room 7002, Mail Stop 1300
Washington, D.C. 200554

Jonathan D. Blake, Esq.
Lee J. Tiedrick
Covington & Burling
1201 Pennsylvania Avenue, NW
P.O. Box 7566
Washington, D.C. 20044

Henry Goldberg, Esq.
Mary J. Dent, Esq.
Goldberg, Godles, Wiener &
Wright
1229 19th Street, NW
Washington, D.C. 20036

James M. Burger
Chief Counsel - Government
Apple Computer, Inc.
1550 M Street, NW, Suite 1000
Washington, D.C. 20005

Larry A. Blosser, Esq.
Donald J. Elardo, Esq.
1801 Pennsylvania Avenue, NW
Washington, D.C. 20006

R. Michael Senkowski, Esq.
Robert J. Butler, Esq.
Suzanne Yelen, Esq.
Wiley, Rein & Fielding
1776 K Street, NW
Washington, D.C. 20006

Jeffrey L. Sheldon, Esq.
Sean A. Stokes, Esq.
Util. Telecommunications Coun.
1140 Connecticut Avenue, NW
Suite 1140
Washington, D.C. 20035

Wayne V. Black, Esq.
Christine M. Gill, Esq.
Rick D. Rhodes, Esq.
Keller and Heckman
1001 G Street, Suite 500 West
Washington, D.C. 20001

Richard H. Strodel, Esq.
Haley, Bader & Potts
Suite 900
4350 North Fairfax Drive
Arlington, VA 22203-1633

James F. Lovette
Apple Computer, Inc.
One Infinite Loop
MS: 301-4J
Cupertino, CA 95014


Bridget Y. Monroe